

### REMARKS

Assignee appreciates the thorough examination of the present application as evidenced by the Office Action mailed June 8, 2010 (hereinafter "Office Action"). Assignee especially appreciates the withdrawal of the previous final rejection. In response, Assignee has amended all of the pending claims to eliminate acronyms and use of the construct "and/or" for improved readability. Assignee respectfully submits, however, that the newly cited combination of references fails to disclose or suggest, at least, the recitations of independent Claims 1, 19, 37, and 55. Accordingly, Assignee submits that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed hereafter.

#### **Claims 1 - 55 are Patentable**

Independent Claims 1, 19, 37, and 55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 7,046,680 to McDysan et al. (hereinafter "McDysan") in view of U. S. Patent No. 7,185,070 to Paul et al. (hereinafter "Paul"). (Office Action, page 2). Independent Claim 1 recites:

A method of modifying at least one of bandwidth and quality of service for a user session in a network that comprises a regional access network that facilitates differentiated end-to-end data transport between at least one of a network service provider and an application service provider and a customer premises network that includes customer premises equipment, comprising:  
receiving a request at at least one of the network service provider and the application service provider to change at least one of bandwidth and quality of service associated with the user's session; and  
using application programming interface calls at at least one of the network service provider and the application service provider to communicate with the regional access network to modify the at least one of bandwidth and quality of service associated with the user's session.

Claims 19, 37, and 55 include similar recitations. According to the independent claims, a request is received at the network service provider and/or the application service provider to change the bandwidth and/or the quality of service associated with an existing user session. The Office Action alleges that the programmable access device 40 shown in FIG. 2 of McDysan

corresponds to the network service provider and/or the application service provider and cites col. 16, lines 59 – 64 along with Fig. 6 of McDysan as disclosing the request for changing bandwidth and/or quality of service associated with an existing user session. (Office Action, page 3). In sharp contrast to the recitations of independent Claims 1, 19, 37, and 55, however, the cited passage from McDysan explains that the Resource Reservation Protocol (RSVP) can be used, "[f]or example, ...to request a path of specified bandwidth at a particular time." (McDysan, col. 16, lines 65 – 66). Thus, McDysan does not teach or suggest receiving a request for a change in bandwidth and/or quality of service for an existing user session, but instead teaches that a customer application may use RSVP to request a new network path with a particular bandwidth.

The Office Action acknowledges that McDysan fails to disclose or suggest using application programming interface calls ad the network service provider and/or the application service provider to communicate with the regional access network to modify the bandwidth and/or quality of service associated with a user's session, but alleges that Paul provides the missing teachings. (Office Action, page 3). In contrast to the recitations of independent Claim 21, however, Paul explains that an application programming interface 32 is used to implement quality of service negotiators that reside on a client application computer and a server application computer. (Paul, col. 4, lines 33 – 39; FIG. 1). Paul does not appear to include any description of using an application programming interface to communicate with a regional access network to modify bandwidth and/or quality of service associated with a user's session. Moreover, Paul fails to remedy the deficiencies of McDysan described above with respect to receiving a request at a network service provider and/or an application service provider to change the bandwidth and/or quality of service associated with an existing user session.

For at least the foregoing reasons, Assignee respectfully submits that independent Claims 1, 19, 37, and 55 are patentable over McDysan, and that dependent Claims 2 - 18, 20 - 36, and 38 - 54 are patentable at least by virtue of their depending from an allowable claim.

#### **Various Dependent Claims are Separately Patentable**

Claims 2 - 18, 20 - 36, and 38 - 54 also stand rejected as unpatentable under 35 U.S.C. § 103(a) over McDysan in view of Paul. (Office Action, page 2). These claims depend from independent Claims 1, 19, and 37, respectively, and are allowable for at least the reasons

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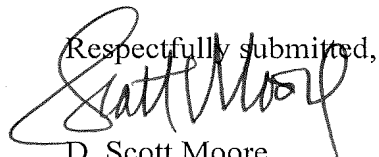
discussed above. Many of these claims, however, are separately patentable. For example, as discussed above, McDysan and Paul do not disclose receiving a request for a change in bandwidth and/or QoS for an existing user session. Accordingly, McDysan and Paul do not disclose any of the details of such a request as recited, for example, in Claims 2, 3, 17, 20, 21, 35, 38, 39, and 53. Assignee, therefore, submits that Claims 2, 3, 17, 20, 21, 35, 38, 39, and 53 are separately patentable for at least these additional reasons.

Moreover, as each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Assignee does not believe that it is necessary to argue the allowability of each dependent claim individually. Assignee does not necessarily concur with the interpretation of these claims, or with the bases for rejection set forth in the Office Action. Assignee therefore reserves the right to address the patentability of these claims individually as necessary in the future.

### CONCLUSION

In light of the above amendments remarks, Assignee respectfully submits that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,

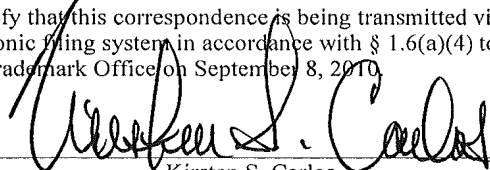
  
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#### CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on September 8, 2010.

Signature: \_\_\_\_\_

  
Kirsten S. Carlos